

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DARRYL BELL,	§	
Petitioner,	§	
	§	
v.	§	CIVIL ACTION NO: H-08-0168
	§	
NATHANIEL QUARTERMAN,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division,	§	
Respondent.	§	

MEMORANDUM AND RECOMMENDATION

Darryl Bell's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 has been referred to this magistrate judge for a report and recommendation (Dkt. 4). The court recommends that Bell's petition be denied with prejudice.

BACKGROUND

Bell is currently in the custody of the Texas Department of Criminal Justice serving consecutive sentences for delivery of cocaine and aggravated assault. It is not necessary to recite the procedural history of Bell's appeal and state habeas proceedings because Bell is challenging a disciplinary proceeding, not his convictions.

On March 27, 2007, Bell was found guilty of fighting without a weapon, a Level 2, Code 21.0 violation of the TDCJ-CID *Disciplinary Rules and Procedures for Offenders*. The hearing officer assessed punishment as (1) 45 days loss of recreation, commissary, and property privileges; (2) 45 days cell restriction; and (3) reduction in line class from L2 to L3.

Bells step one and step two grievances were denied. He filed this petition on December 12, 2007.

ANALYSIS

A prisoner is entitled to federal habeas relief only when he has been deprived of some right secured by the United States Constitution or federal law. *Teague v. Quarterman*, 482 F.3d 769, 773 (5th Cir. 2007). “The Due Process Clause does not protect every change in the conditions of confinement having a substantial adverse impact on the prisoner.” *Sandin v. Conner*, 515 U.S. 472, 478 (1995). However, prisoners do not lose all constitutional rights when they are incarcerated. *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974). While the Supreme Court explained in *Sandin* that states may under certain circumstances create rights that implicate Due Process, such rights are limited to freedom from restraints that impose “atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” 515 U.S. at 484.

A prisoner cannot state a claim for federal habeas relief based on disciplinary sanctions unless the sanctions imposed affect the fact or duration of the prisoner’s sentence. *Malchi v. Thaler*, 211 F.3d 953, 958 (5th Cir 2000). Bell did not lose good time credits as a result of his disciplinary proceeding.¹ A change in good time earning classification will not

¹ Even if Bell had lot earned good time credits, he would not have a claim for federal habeas relief because he is not eligible for mandatory supervision until he finishes serving the last consecutive sentence on which he is eligible for which mandatory supervision. *Ex parte Ruthart*, 980 S.W.2d 469, 473 (Tex. Crim. App. 1998). To the extent Bell intends to claim that his punishment will delay his release on parole, it is well settled that “[t]here is no right or constitutional expectancy of early release on parole in Texas, because parole is within the

“inevitably” affect the duration of a prisoner’s sentence and thus does not give rise to a claim for federal habeas relief. *Malchi*, 211 F.3d at 959; *Carson v. Johnson*, 112 F.3d 818, 821 (5th Cir. 1997); *Sandin*, 515 U.S. at 487. Loss of privileges and cell restrictions are not atypical of the hardships that commonly occur in prison life. See *Malchi*, 211 F.3d at 958 (“Clearly, . . . thirty day loss of commissary privileges and cell restriction do not implicate due process concerns”); *Madison*, 104 F.3d at 767 (loss of commissary and cell restriction); *Pickens v. Minton*, 109 Fed. Appx. 655, 656 (5th Cir. 2004) (placement in isolation for 20 days); *Sandin*, 515 U.S. at 485-86 (segregated confinement). Thus, Bell has not raised a claim that implicates his due process rights.

CONCLUSION

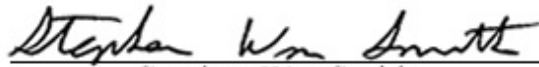
Bell cannot state a claim for federal habeas relief based on alleged constitutional defects in his disciplinary proceedings. Therefore, the court recommends that Bell’s petition be denied with prejudice.

The court further finds that Bell has not made a substantial showing that he was denied a constitutional right or that it is debatable whether this court is correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Therefore, the court recommends that a certificate of appealability not issue.

total and unfettered discretion of the State.” *Teague v. Quarterman*, 482 F.3d 769, 776 (5th Cir. 2007); *Madison v. Parker*, 104 F.3d 765, 768 (5th Cir. 1997).

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* Rule 8(b) of the Rules Governing Section 2254 Cases; 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72.

Signed at Houston, Texas on September 5, 2008.



Stephen Wm Smith
United States Magistrate Judge